

COMMONWEALTH OF MASSACHUSETTS

ESSEX

APPEALS COURT
No. 2016-P-1016

COMMONWEALTH

v.

SCYPIO DENTON

BRIEF AND RECORD APPENDIX FOR THE APPELLANT
ON APPEAL FROM THE ESSEX COUNTY SUPERIOR COURT

JAMES E. METHE, ESQUIRE
21 Stockbridge Street
Springfield, MA 01104
(413) 746-9257
jemethe@gmail.com
BBO #344100

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
ISSUES PRESENTED.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
ARGUMENT.....	9
I. THE JUDGE ABUSED HIS DISCRETION WHEN HE ALLOWED THE PROSECUTOR TO PRESENT EVIDENCE OF DENTON'S CONVICTIONS WHICH WERE OVER TWENTY YEARS OLD TO PROVE HE HAD THE PREDISPOSITION TO COMMIT THE CRIME AND THE ERROR WAS A VIOLATION OF DENTON'S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.....	9
II. THE PROSECUTOR'S IMPROPER REMARKS DURING HER CLOSING ARGUMENT EITHER PREJUDICED DENTON OR CREATED A SUBSTANTIAL RISK OF A MISCARRIAGE OF JUSTICE AND WERE A VIOLATION OF DENTON'S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.....	17
III. A COMMENT MADE BY OFFICER RAWSTON THAT DENTON WAS "KNOWN TO HIM" IMPLIED DENTON HAD BEEN FREQUENTLY ARRESTED BEFORE OR SINCE AND WAS NOT RESPONSIVE TO THE QUESTION POSED BY THE PROSECUTOR AND CREATED A SUBSTANTIAL RISK OF A MISCARRIAGE OF JUSTICE AND DENIED DENTON DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.....	23
IV. IV. THE MANDATORY MINIMUM DRUG LAWS UNDER WHICH DENTON WAS SENTENCED VIOLATED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS AS THEY ARE CONTRARY TO THE SEPARATION OF POWERS DOCTRINE, INFLECT CRUEL AND UNUSUAL PUNISHMENT AND VIOLATE EQUAL PROTECTION UNDER THE LAW.	27

CONCLUSION.....	32
CERTIFICATE OF COMPLIANCE.....	32
ADDENDUM.....	33
RECORD APPENDIX.....	38

TABLE OF AUTHORITIES

Cases

<u>Abraham v. Woburn</u>	
383 Mass. 724 (1981).....	25
<u>Chambers v. Mississippi</u>	
410 U.S. 284 (1973).....	27
<u>Chapman v. California</u>	
386 U.S. 18 (1967).....	23
<u>Commonwealth v. Alphas</u>	
430 Mass. 8 (1999).....	19,25
<u>Commonwealth v. Azar</u>	
435 Mass. 675 (2002).....	26
<u>Commonwealth v. Barrett</u>	
418 Mass. 788 (1994).....	15
<u>Commonwealth v. Bernardo B.</u>	
453 Mass. 158 (2009).....	31
<u>Commonwealth v. Bourgeois</u>	
391 Mass. 869 (1984).....	20
<u>Commonwealth v. Buswell</u>	
468 Mass. 92 (2014).....	13
<u>Commonwealth v. Butler</u>	
445 Mass. 568 (2005).....	15
<u>Commonwealth v. Childs</u>	
23 Mass. App. Ct. 33 (1986).....	14
<u>Commonwealth v. Cifizzari</u>	
397 Mass. 560 (1986).....	20
<u>Commonwealth v. Cole</u>	
468 Mass. 294 (2014).....	29
<u>Commonwealth v. Cole</u>	
473 Mass. 317 (2015).....	21
<u>Commonwealth v. Dingle</u>	
73 Mass. App. Ct. 274 (2008).....	13

<u>Commonwealth v. Dirgo</u>	
474 Mass. 1012 (2016).....	21
<u>Commonwealth v. Disler</u>	
451 Mass. 216 (2008).....	13
<u>Commonwealth v. Dunton</u>	
397 Mass. 101 (1986).....	12
<u>Commonwealth v. Kelly</u>	
417 Mass. 266 (1994).....	21
<u>Commonwealth v. Kozec</u>	
399 Mass. 514 (1987).....	19, 20, 22
<u>Commonwealth v. Laltaprasad</u>	
SJC-11970.....	28, 31
<u>Commonwealth v. Miller</u>	
361 Mass. 644 (1972).....	13
<u>Commonwealth v. Okoro</u>	
471 Mass. 51 (2015).....	30
<u>Commonwealth v. Perryman</u>	
55 Mass. App. Ct. 187 (2002).....	25
<u>Commonwealth v. Randolph</u>	
438 Mass. 290 (2002).....	26, 28
<u>Commonwealth v. Rodriguez</u>	
461 Mass. 256 (2012).....	29
<u>Commonwealth v. Shea</u>	
467 Mass. 788 (2014).....	19, 25
<u>Commonwealth v. Shelley</u>	
374 Mass. 466 (1978).....	20
<u>Commonwealth v. Silva-Santiago</u>	
453 Mass. 782 (2009).....	19
<u>Commonwealth v. Vargas</u>	
417 Mass. 792 (1994).....	13
<u>Diatchenko v. District Attorney</u>	
466 Mass. 655 (2013).....	29

<u>Estes v. Texas</u>	
381 U.S. 532 (1965).....	27
<u>Foster v. State</u>	
116 Nev. 1088 (2000).....	15
<u>Green v. Georgia</u>	
442 U.S. 95 (1979).....	17
<u>Griffin v. California</u>	
380 U.S. 609 (1965).....	23
<u>In Re Murchison</u>	
349 U.S. 133 (1955).....	17
<u>L.L. v. Commonwealth</u>	
470 Mass. 169, (2014).....	17
<u>Taylor v. State</u>	
777 A.2d 759 (2001).....	15
<u>United States v. Abumayyaleh</u>	
530 F.3d 641 (8th Cir. 2008).....	16
<u>United States v. Bannister</u>	
786 F. Supp. 2d 617 (E.D.N.Y. 2011).....	29
<u>United States v. Engleman</u>	
648 F. 2d 473 (8th Cir. 1981).....	16
<u>United States v. McLaurin</u>	
764 F. 3d 372 (4th Cir. 2014).....	16
<u>United States v. Swiatek</u>	
819 F. 2nd 721, (7th Cir. 1987).....	16

Statutes

G.L. c. 94C, § 32(b).....	2
---------------------------	---

Other Authorities

Constitutional Provisions

Fifth Amendment to the United States	
Constitution.....	passim

Sixth Amendment to the United States Constitution.....	passim
Eighth Amendment to the United States Constitution.....	29
Fourteenth Amendment to the United States Constitution.....	passim
Article One of the Declaration of Rights of the Massachusetts Constitution.....	31
Article Ten of the Declaration of Rights of the Massachusetts Constitution.....	31
Article Twelve of the Declaration of Rights of the Massachusetts Constitution.....	passim
Article Twenty-Six of the Declaration of Rights of the Massachusetts Constitution.....	29
Article Thirty of the Declaration of Rights of the Massachusetts Constitution.....	28

ISSUES PRESENTED

I. Whether the judge abused his discretion when he allowed the prosecutor to present evidence of Denton's convictions which were over twenty years old to prove he had the predisposition to commit the crime and the error was a violation of Denton's right to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution and their cognate provisions under the State Constitution.

II. Whether the prosecutor's improper remarks during her closing argument either prejudiced Denton or created a substantial risk of a miscarriage of justice and were a violation of Denton's right to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution and their cognate provisions under the State Constitution.

III. Whether a comment made by Officer Rawston that Denton was "known to him" implied Denton had been frequently arrested before or since and was not responsive to the question posed by the prosecutor created a substantial risk of a miscarriage of justice and denied Denton due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution and their cognate provisions under the State

Constitution.

IV. Whether the mandatory minimum drug laws under which Denton was sentenced violated his state and federal constitutional rights and are contrary to the separation of powers doctrine, inflict cruel and unusual punishment and violate equal protection under the law.

STATEMENT OF THE CASE

In December of 2013 an Essex County Grand Jury returned one indictment against Scypio Denton ("Denton"). This indictment alleged distribution of heroin, subsequent offense (G.L. c. 94C, § 32(b)) [A/8].¹ A trial was held on this indictment before Judge Lang and a jury from March 2, 2015 to March 6, 2015 in Essex County Superior Court in Salem. Denton was found guilty of distribution of heroin [6/83], and then pled guilty to the subsequent offender portion of the indictment [6/88]. He was sentenced to not less than nor more than three years, six months at M.C.I. Cedar Junction [6/101]. A notice of appeal was filed on March 6, 2015 [A/19] and the case was docketed in this Court on July 25, 2016.

STATEMENT OF FACTS

Evidence concerning distribution on December 17, 2013

¹ References to the record on appeal are as follows: to the trial by [Volume/Page], to the addendum by [Add/Page], and to the record appendix by [A/Page].

Gregg Desfosses ("Desfosses") was employed by the Massachusetts State Police for nineteen years [3/40]. He had worked for sixteen years as an undercover officer in various drug task forces throughout Massachusetts [3/41]. In order to portray a person involved in the drug trade he had pierced ears, tattoos and fake track marks [3/44-45]. During the course of his career he had made approximately 850 undercover buys [3/46].

He described the role of a "middleman" in a drug transaction as a person who would place a call to a dealer in exchange for either drugs or money for bringing in customers [3/50-51]. He stated that there was an unwritten rule that the buyer would give the middleman \$5-\$10 as appreciation for obtaining the drugs [3/52].

On December 17, 2013 he was assigned to work with the Lynn Police in a narcotics investigation on Union Street in Lynn, which he described as a high crime area [3/52-53]. The investigation was not focused on any one individual [3/53]. He was working that day with Trooper Lawrence Richardson ("Richardson"), who was driving his undercover vehicle [3/56]. They got out of the car and decided to approach people on foot in an attempt to buy drugs [3/56].

He told people that he was "dope sick", that he needed to "hook up" and that he needed some "brown" [3/58]. There was an unwritten rule among drug users that if somebody is sick from heroin the user would try to help them out because they had been in that position before [3/59]. He believed that in Lynn this approach was successful about 30% of the time [3/60].

On that day he approached a man that he did not know (later identified as Denton) and told him he was "dope sick" and needed "a forty" of "brown" as his dealer was not answering the telephone because he owed him money [3/62-63]. Denton responded that he could take care of that but that they would have to take a ride, and DesFosses told him he had a car around the corner [3/63]. The three men entered the undercover vehicle and Denton used Richardson's cell phone to make a call [3/64-65]. Denton told the person on the other end that "he wanted to come by and grab a bag" [3/66].

Richardson, who was driving the car with Denton in the front passenger seat, heard a female voice on the other end of the line say "Larry?" [3/116-17]. When Denton left the car, Richardson checked his phone and could see that Denton had dialed a number for a woman with the street name of Jay, who Richardson knew to be

Josephine Llama [3/119]. He had purchased heroin from her in the past, and had exchanged texts with her at numerous other times [3/119,134]. He believed that Llama was the person on the other end of the call, but since he did not see who Denton actually purchased drugs from that day, Llama was never charged in this incident [3/135-38].

Denton told them to proceed to 398 Cobbett Hill Apartments, and DesFosses gave him \$40 and took his cell phone as collateral [3/66-67]. Denton entered the front door of the apartments and came out a short time later, got back in the car, and handed DesFosses a bag of a tan powdered substance [3/69]. Denton asked them if he could get a ride to his house and they agreed [3/70]. The troopers gave a pre-arranged signal to the surveillance team but Denton was not arrested at that time [3/71].

They dropped Denton off at 10 Farrar Street in Lynn which he said was his residence, and was given \$5 for obtaining the drugs [3/71-72]. After that, DesFosses met with Michael Ferraro ("Ferraro") of the Lynn Police Department, told him what had occurred and gave him the bag to be secured and sent out for analysis [3/72].

Ferraro had been one of the surveillance officers that day, and saw DesFosses talking to a man he identified as Denton [3/148]. He was in a different

undercover vehicle and they followed the car that DesFosses was in to the Cobbet Hill Apartments [3/150]. He saw Denton get out and enter the building and come back out a few minutes later [3/151]. They again followed the car to Farrar Street, during which time they got a signal that a deal had been conducted [3/151]. They did not arrest Denton as it was a buy-walk operation used to protect the identity of the undercover officers [3/152].

Ferraro had a conversation with DesFosses about what had occurred and DesFosses handed him a bag allegedly containing heroin [4/29]. He put the bag into an evidence envelope, and also made an entry in the Lynn Police evidence log book concerning the bag [4/30-33]. He sought an arrest warrant for Denton and he was arrested at a later date [4/34-36].

Kimberly Dunlap was a forensic scientist with the Massachusetts State Police Forensic Service Group [4/59]. Her duties included analyzing evidence submitted by local police departments for the presence of controlled substances [4/59]. During her three years with the state police she had analyzed approximately 1,800 substances [4/62]. She analyzed the substance in this case, and determined the weight to be .16 grams [4/63]. She stated

with a reasonable degree of scientific certainty that the substance was a mixture of heroin and caffeine [4/68].

Evidence concerning prior convictions

Since Denton raised the defense of entrapment, the judge allowed the prosecutor to present evidence of Denton's predisposition to commit the crime [4/24]. Officer Robert Rawston ("Rawston") of the Lynn Police Department retired in 2010 after working for the department for thirty-three years [4/44].

On November 6, 1993 he received a call to go to 22 Henry Avenue in Lynn, and when he went to the third floor he saw a man who he identified as Denton [4/48]. He saw Denton place a pipe on the floor and something under the door, which turned out to be a bag of marijuana [4/48-49]. He spoke to Denton who stated that he was buying drugs for two men in a car outside [4/51]. He also found a bag near Denton as well as another bag in his sneaker during booking [4/53-54]. As a result of this incident, Denton was charged and convicted of possession with intent to distribute cocaine [4/55].

Francis Hughes ("Hughes") was employed by the Massachusetts State Police for twenty-nine years [6/11]. For approximately fifteen years he worked in the State Police Gang Unit, where he often worked as an undercover

officer [6/12]. In December of 1994 he was working undercover in Lynn when he met Denton and asked him if he could get him a \$20 piece of crack cocaine [6/12-14]. Denton said to follow him and that he could take care of him [5/14].

They went to the rear porch of a residence where Denton knocked on the window and when someone looked out Denton said "it's Scypio" and that he had a new customer [6/16]. After Denton stated that they wanted a \$20 piece of crack, a person opened the door and the two men entered the apartment [6/17]. The three men already inside seemed nervous and Hughes was concerned for his safety [6/17]. Hughes asked for his money back and the two men left the apartment without buying drugs [6/18].

Denton told Hughes that he was acting too nervous and indicated that he had another place they could go [6/18]. They walked to another location and Denton said "give me the money, wait here, I'll go get it for you" [6/18]. Hughes took Denton's radio as collateral [6/18]. Denton went to the rear of a house and came back and handed Hughes a bag containing a substance that looked like crack [6/19]. Denton wanted some money for "middling" the deal, but Hughes told him to get it from the seller [6/19]. Denton told him he had to bring four

or five people there before he would get paid [6/20].

Hughes identified Denton at the time and also in court as the man who handed him the bag [6/21-22]. As a result of this incident, Denton was charged and convicted of possession with intent to distribute cocaine [6/22]. The prosecutor admitted into evidence the certified convictions for the two cases noted above, in addition to a 1991 conviction from Peabody District Court for Possession of a Class A substance with intent to distribute [6/23] [A/13-18].

ARGUMENT

- I. THE JUDGE ABUSED HIS DISCRETION WHEN HE ALLOWED THE PROSECUTOR TO PRESENT EVIDENCE OF DENTON'S CONVICTIONS WHICH WERE OVER TWENTY YEARS OLD TO PROVE HE HAD THE PREDISPOSITION TO COMMIT THE CRIME AND THE ERROR WAS A VIOLATION OF DENTON'S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.

On the first day of trial, the prosecutor filed "Commonwealth's motion in limine to admit evidence of Defendant's reputation and prior convictions as evidence of Defendant's predisposition to commit the crime" [A/9-10]. During the trial, Denton filed "Defendant's motion to exclude, or in the alternative limit, evidence of predisposition" [A/11-12].

These motions were the result of Denton raising the

defense of entrapment [2/4]. There was a short discussion on the issue before jury impanelment, when the judge stated that if Denton met the threshold on the issue the burden would then shift to the Commonwealth, and the jury would get an instruction on entrapment [2/4-5]. The judge further stated he would have to hear the evidence first [2/5].

The issue was discussed three more times during the trial. There was a short discussion prior to the start of the trial [3/20-21]. There was a further discussion after the trial started regarding the witnesses the prosecutor would use to show predisposition [3/92-93]. The judge decided that Denton had met the threshold to show entrapment and he would instruct the jury on it [3/95], which he did [4/42-43, 6/67-70]. He further stated that the prosecutor would then bear the burden to prove beyond a reasonable doubt that there was no inducement by the police or Denton had a predisposition to commit the crime [3/96].

There is a lengthy discussion on the issue prior to the first witness for the Commonwealth on predisposition. The prosecutor stated that she intended to introduce into evidence the facts of two prior cases, along with the certified convictions from those two cases and a

certified conviction from one other case [4/17].

Trial counsel admitted that the prosecutor would be allowed to present evidence of predisposition where the convictions were similar to the indictment in this case [4/21]. She pointed out that in the case law the prior crimes were contemporaneous with the charged conduct, which was not the case here [4/22]. She argued that the age of the prior convictions here (approximately twenty years prior to the date of this alleged offense) were too remote and were therefore prejudicial [4/22-23].

The judge stated that the issue needed to be addressed ". . . because the predisposition that is of importance is predisposition at the time of the charged crimes" [4/23]. The judge agreed that the age of the convictions ". . . is an appropriate consideration" and stated that ". . . these are not contemporaneous convictions or conduct; they are fairly old" [4/23].

However, after seeming to agree with trial counsel's objection, the judge stated that he was denying Denton's motion to exclude, finding that the probative value of the evidence was not outweighed by the prejudicial impact [4/24]. He would allow witnesses to testify as to Denton's conduct and also allow the convictions to be admitted [4/24,26]. The judge also indicated he would

not be inclined to allow reputation evidence from the early 90's, but the prosecutor never attempted to introduce such evidence [4/27] (but see Issue III, infra).

Trial counsel objected before the testimony of Officer Rawston, the first predisposition witness, as to the age of the prior incident [4/43-44] [A/21]. She objected again after the testimony of Officer Rawston, with her confirming that the judge stated "preserving the objection generally - to the testimony regarding a conviction dating back to 1993?" [4/57]. Trial counsel repeated her objection again during the testimony of Hughes [6/13] [A/21]. When the prosecutor moved to admit the three certified convictions, trial counsel objected, and the judge stated "all rights reserved" [6/23].² The issue is therefore preserved for appellate review. Commonwealth v. Dunton, 397 Mass. 101, 104 n.2 (1986).

The incidents which led to the prior convictions occurred between nineteen and twenty-two years before the date of this alleged crime. There are not many cases in this state that address the issue of the age of the

² Trial counsel stated to the judge that she was concerned about evidence that Denton had committed the same conduct on three previous occasions "... injects a certain extra level of prejudice in the proceedings. . ." [6/25]. The judge agreed to address it in his instructions [6/27,28], and he did [6/69].

convictions used to show predisposition. The only cases cited by either side in their filings or mentioned by the parties and judge at trial are Commonwealth v. Vargas, 417 Mass. 792, 794 (1994), and Commonwealth v. Dingle, 73 Mass. App. Ct. 274, 284 (2008).

The other cases mentioned by the parties and the judge do not deal with prior offenses to show predisposition. The predisposition evidence in these cases were statements made by the Defendant to other individuals or the police. These cases are Commonwealth v. Disler, 451 Mass. 216, 233 (2008), Commonwealth v. Miller, 361 Mass. 644, 650 (1972), and Commonwealth v. Buswell, 468 Mass. 92, 106-07 (2014).

In Vargas, supra, the Defendant was charged with trafficking in cocaine, and the Commonwealth used a pending charge of possession of cocaine which was two years old to show predisposition. The Supreme Judicial Court found that the charge of possession was not similar enough to trafficking (and was not a conviction) to outweigh the risk of prejudice and reversed the conviction.

In Dingle, supra, this Court found that the prior offenses used to show predisposition were more prejudicial than probative. The prior offenses used were

a 1976 conviction, a 1986 police report and a 1987 docket sheet indicating that the case had been dismissed (the incident on trial was from 2001, so the priors were between fourteen and twenty-five years old).

This Court found that the priors were prejudicial because they were old, contained hearsay, and only one of the three was a conviction. The conviction was not reversed as this Court found that the erroneously admitted evidence was not prejudicial as the Defendant had made admissions about his conduct to another person. In discussing the age of the prior incidents, this Court noted that the priors were old and cited Commonwealth v. Childs, 23 Mass. App. Ct. 33, 38 (1986) for the proposition that remote convictions can be more prejudicial. Unfortunately, Childs, supra, is a case about ineffective assistance of counsel for failure to object to impeachment of the Defendant with remote prior convictions. That is not the situation presented here.

The Supreme Judicial Court has recognized that there is a time limit concerning a prosecutor's use of prior bad acts of the Defendant when there has not been a defense of entrapment raised. The Court stated "[t]o be sufficiently probative the evidence must be connected with the facts of the case [and] not be too remote in

time'" Commonwealth v. Butler, 445 Mass. 568, 574, (2005), citing Commonwealth v. Barrett, 418 Mass. 788, 794 (1994).

A search of other jurisdictions for opinions on this issue reveals some guidance in this area. In Taylor v. State, 777 A.2d 759 (2001), the Supreme Court of Delaware reversed a conviction when the prosecution presented evidence of the Defendant's prior convictions from 1990 and 1993 to show predisposition concerning an incident occurring in 1999. In stating that there is no "bright line test for the remoteness factor", the Court remanded the matter for the lower court to determine whether these prior convictions were too remote. The Court stated that in determining whether the prior convictions are too remote, "...the court must keep in mind that the relevant time period for determining the defendant's predisposition is relatively limited" Id. at 769.

In Foster v. State, 116 Nev. 1088 (2000), the Court held that a 1989 conviction was not too remote to show predisposition concerning an incident in 1997. The Court held that prior crimes may be admitted to show predisposition where "1)the other crime is of a similar character to the offense on which the defendant is being tried; 2)the other crime is not too remote in time from

the offense charged; and 3) the probative value of the other crime is not substantially outweighed by the danger of unfair prejudice" Id. at 1096.

In the federal realm, the Court in United States v. Abumayyaleh, 530 F.3d 641, 650 (8th Cir. 2008), held that prior convictions from 1993 and 1995 were not too remote for an incident that occurred in 2005. The Court stated that "[t]here is no absolute rule regarding the number of years that can separate offenses." We apply a 'reasonableness standard and examine the facts and circumstances of each case'" Id. at 650, citing United States v. Engleman, 648 F.2d 473, 479 (8th Cir. 1981). In United States v. McLaurin, 764 F.3d 372 (4th Cir. 2014), the Court stated "[t]he assertion of an entrapment defense does not justify admission of every bad act ever done by the defendant, see United States v. Swiatek, 819 F.2d 721, 728 (7th Cir. 1987), but distinguishing the unwary innocent from the unwary criminal nonetheless requires a 'searching inquiry'" Id. at 381.

Consequently, other jurisdictions conclude that there is no absolute rule for how remote the prior convictions can be, but seem to indicate that there is a limit. There is no definition of what that limit is, but a reasonable limit seems to be a consistent holding.

Denton would argue that the approximately twenty years here between the time of the prior convictions and the case at bar is not "reasonable" and warranted exclusion.

The judge abused his discretion when he allowed the prosecutor to introduce these prior convictions which were too remote in time. A judge abuses his discretion when he makes a "'clear error of judgement in weighing' the factors relevant to the decision.....such that the decision falls outside the range of reasonable alternatives" L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014)(citations omitted). The error denied Denton his right to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article Twelve of the Declaration of Rights of the Massachusetts Constitution. Green v. Georgia, 442 U.S. 95, 97 (1979), In Re Murchison, 349 U.S. 133, 136 (1955).

- II. THE PROSECUTOR'S IMPROPER REMARKS DURING HER CLOSING ARGUMENT EITHER PREJUDICED DENTON OR CREATED A SUBSTANTIAL RISK OF A MISCARRIAGE OF JUSTICE AND WERE A VIOLATION OF DENTON'S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.

In the beginning of her closing argument, the prosecutor stated: "As you all know, police officers have been going undercover in all sort of cases, not just drug

cases. They go undercover in the Internet posing as children. They go undercover infiltrating organized crime rings, assuming fake identities" [6/35].

Shortly after she stated:

The majority of normal people, like all of you, the 70 to 80 percent just walk away.

Continuing later in that same vein she stated:

. . . because the average person out there, like all of you, would have simply walked away. And the words that Trooper DesFosses used, those words, were probably not familiar to you before you came into this courtroom. And in fact, if someone came up to you on the streets before you heard all of this at trial and asked for some brown, you probably would have run away thinking that they were crazy[6/38-39].

Later on in her closing, she stated:

And Josephine Lamas was not charged for selling to the Defendant, because no witnesses saw her hand heroin to him. You heard testimony that in the - when Trooper Richardson purchased from her in the past, there was one occasion where she did not do the hand to hand. She used a runner. So the police are not going to rush to judgement and charge Josephine Llamas when there's not evidence that she handed it to the Defendant. And if you have concerns that the police are going after a smaller fish instead of a bigger fish, the fact of the matter is they don't have proof to a moral certainty against Josephine Llamas that they do against Scypio Denton [6/43].

The judge had earlier instructed the jury that "[w]hether or not she (Llamas) was charged in this case

is not an issue before you. . . Whether this person Jay (Llamas) or anybody else who is charged or not charged, is not your concern in this case" [3/138-39].

After the prosecutor finished, trial counsel objected to the statements above about the jurors being normal, average people and that they would not know the drug vernacular [6/48] [A/22]. The judge said a number of things which we cannot discern because of the poor quality of the recording of the sidebars, but we can determine that he stated "[i]'m not overly concerned about it, but I was paying attention to it . . . but I don't think it requires a corrective instruction of that kind" [6/49].

Consequently, trial counsel's objection above preserved the issue for appellate review regarding the statements that she objected to. Commonwealth v. Silva-Santiago, 453 Mass. 782, 807-810 (2009). The other two references noted above were not objected to, so Denton must demonstrate that the prosecutor's statements in that regard created a substantial risk of a miscarriage of justice. Commonwealth v. Alphas, 430 Mass. 8, 13 (1999), Commonwealth v. Shea, 467 Mass. 788, 791 (2014).

As stated in Commonwealth v. Kozec, 399 Mass. 514, 516-18 (1987);

a prosecutor should not refer to the defendant's failure to testify, misstate the evidence or refer to facts not in evidence, interject personal belief in the defendant's guilt, play on racial, ethnic, or religious prejudice or on the jury's sympathy or emotions, or comment on the consequences of a verdict The consequences of prosecutorial error depend on a number of factors, such as: Did the defendant seasonably object to the argument? Was the prosecutor's error limited to 'collateral issues' or did it go to the heart of the case (Commonwealth v. Shelley, 374 Mass. 466, 470-471 [1978])? What did the judge tell the jury, generally or specifically, that may have mitigated the prosecutor's mistake, and generally did the error in the circumstances possibly make a difference in the jury's conclusions? See Commonwealth v. Cifizzari, 397 Mass. 560, 579-80 (1986); Commonwealth v. Bourgeois, 391 Mass. 869, 884-85 (1984).

Kozec, supra, at 516-18 (footnotes omitted).

The first comment above, "police officers have been going undercover in all sort of cases..." [6/35] is a statement about facts that were not in evidence in this trial. It is not common knowledge that police officers go undercover in "all sort of" cases, so for the prosecutor to state "[a]s you all know..." is not true. The statement is not relevant to any issue in this case, but is intended to justify the actions of DesFosses in his dealings with Denton.

The next comment noted above, where the prosecutor called the jurors "normal" or "average" and that they would have "walked away" from DesFosses implies that

Denton is not normal or average because he did not. It is disparaging to Denton to use this terminology. In addition, the prosecutor does not know for certain that the jurors would not know the drug vernacular.

Finally, the prosecutor's comments on Josephine Llamas and why she was not charged were improper. The judge specifically instructed the jury that whether she was charged or not was "not their concern" [3/138-39]. The prosecutor is attempting to deflect the jurors possible concerns that the police arrested, as she stated, "a smaller fish instead of a bigger fish" [6/43].

Again, the prosecutor is bringing in facts that were not in evidence in this trial. "A prosecutor must limit comment in closing statement to the evidence and fair inferences that can be drawn from the evidence" Commonwealth v. Cole, 473 Mass. 317, 333 (2015), quoting Commonwealth v. Kelly, 417 Mass. 266, 270 (1994), Commonwealth v. Dirgo, 474 Mass. 1012, 1015 (2016).

There was some evidence that Denton got the drugs from Llamas (as opposed the prosecutor's statement that "there's not evidence that she handed it to the Defendant" [6/43]), as Richardson testified that when he looked at Denton's phone after Denton left the car he saw that he dialed Llamas, a person Richardson knew [3/119].

DesFosses could have gone with Denton to determine who was providing the drugs, but he chose not to. The jurors had a right to consider that in their deliberations. It was improper for the prosecutor to comment on the reasons the police did not charge Llamas, as the judge told the jury it was not their concern [3/138-39].

Addressing the factors from Kozec, supra, in order, trial counsel did object to the statements about the jurors being normal or average (and therefore Denton was not) and that they would not have known the drug vernacular [6/48]. Trial counsel did not object to the other two paragraphs noted above. Some of the prosecutor's comments went to the "heart of the case" as she told the jury that DesFosses actions were okay because going undercover was common, and that they should consider why Denton was charged and not Llamas, even when the judge told the jury not to consider it [3/138-39].

The judge did not give any curative instructions here, stating that he did not think the comments required it [6/49]. The comments may have made a difference in the jury's conclusions, as the jury was told that going undercover was very common, Denton was not "normal", and they should consider that Llamas was not charged because they did not have "proof to a moral certainty" against

her [6/43].

The comments by the prosecutor objected to by trial counsel prejudiced Denton, and the comments not objected to created a substantial risk of a miscarriage of justice and denied Denton his right to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article Twelve of the Declaration of Rights of the Massachusetts Constitution. See Chapman v. California, 386 U.S. 18, 26 (1967) (prosecutor's comments not harmless and denied defendant fair trial); Griffin v. California, 380 U.S. 609, 615 (1965) (same).

III. A COMMENT MADE BY OFFICER RAWSTON THAT DENTON WAS "KNOWN TO HIM" IMPLIED DENTON HAD BEEN FREQUENTLY ARRESTED BEFORE OR SINCE AND WAS NOT RESPONSIVE TO THE QUESTION POSED BY THE PROSECUTOR AND CREATED A SUBSTANTIAL RISK OF A MISCARRIAGE OF JUSTICE AND DENIED DENTON DUE PROCESS AND A FAIR TRIAL UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND THEIR COGNATE PROVISIONS UNDER THE STATE CONSTITUTION.

In an attempt to prove that Denton was predisposed to commit the crime by producing evidence of prior convictions, the prosecutor and Rawston engaged in the following exchange on direct examination:

Q. And do you recall what happened when you got inside 22 Henry Avenue?

A. I do.

Q. Can you tell us what you saw?

A. I went up to the second floor. And as I was -- as I got to the landing, I heard a noise on the third floor, and I proceeded up to the third floor, where I saw -

Q. What kind of noise was it?

A. Just some kind of shuffling noise. And when I got up to the third floor, I observed Scypio Denton, who is known to me [4/47-48].

The prosecutor asked Rawston what he saw and what kind of noise he heard, but Rawston responded by stating that he observed Denton, and then added another comment that was not responsive to the question and implied that Denton was either arrested frequently before the date of the incident Rawston was testifying about (1993) or had been frequently arrested since then. That would be the only logical way that Denton would be known to Rawston.

Trial counsel did not object at the time, but raised it the next day before the trial resumed [6/7-8]. She objected on two grounds: 1) reputation evidence from the early 90's had been excluded by the Court [4/27], and 2) the statement was not responsive. The judge agreed, and stated that he let it go so as to not draw attention to it [6/7]. He further stated "[a]nd I know that you might be concerned", and that "I thought that the remark was gratuitously throw (sic) in without any intention by Ms.

Dolhun", and he instructed the prosecutor to tell the other witnesses not to testify in a similar manner [6/8].

Unfortunately, even though trial counsel did bring the issue to the attention of the judge the next day, it does not appear that the issue is preserved for appellate review. Trial counsel was put in a difficult position in that she had to make a strategic decision whether to object at the time or wait as she stated "[m]y concern was obviously in drawing more attention to it in objecting" [6/8].

The case law, however, is not in Denton's favor in this regard.

It is black letter law that objections to evidence, or to any challenged order or ruling of the trial judge, are not preserved for appeal unless made in a precise and timely fashion, as soon as the claimed error is apparent so as "to afford the trial judge an opportunity to act promptly to remove from the jury's consideration evidence [or whatever else is claimed to have been improperly presented] which has no place in the trial.

Commonwealth v. Perryman, 55 Mass. App. Ct. 187, 192 (2002), quoting Abraham v. Woburn, 383 Mass. 724, 726, n.1 (1981). Denton must therefore demonstrate that the challenged statement created a substantial risk of a miscarriage of justice. Commonwealth v. Alphas, 430 Mass. 8, 13 (1999), Commonwealth v. Shea, 467 Mass. 788, 791 (2014).

When the Defendant claims there is a substantial risk of a miscarriage of justice, this Court reviews the case as a whole and asks four questions:

1) Was there error? 2) Was the defendant prejudiced by the error? 3) Considering the error in the context of the entire trial, would it be reasonable to conclude that the error materially influenced the verdict? 4) May we infer from the record that counsel's failure to object or raise a claim of error at an earlier date was not a reasonable tactical decision.

Commonwealth v. Randolph, 438 Mass. 290, 298 (2002), citing Commonwealth v. Azar, 435 Mass. 675, 687-88 (2002).

Analyzing those factors here, there certainly was error when Rawston testified that he "knew" Denton. Even the judge knew that the statement was improper because he stated "I didn't think it was responsive to Ms. Dolhun's question" and also stated "[a]nd I know that you might be concerned" [6/7-8]. Denton was prejudiced by the remark as the statement implied that Denton was either arrested frequently before the date of the incident Rawston was testifying about (1993) or had been frequently arrested since then.

Moving to the third factor, it would be reasonable to conclude that the error influenced the verdict. Especially here, where the defense was entrapment, the

jury heard from Rawston that he "knew" Denton back in 1993. The implication is that that Denton was involved with drugs even before the prior convictions that were testified to and further weakened his defense of entrapment. Finally, it is clear from the transcript that trial counsel did make a tactical decision not to object at the time of the remark so as not to draw the jury's attention to it (see quotes from trial counsel and judge, pages 24-25, supra).

Since the answer to all four factors is in the affirmative, this Court should find that there has been a substantial risk of a miscarriage of justice. Denton was also denied his right to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article Twelve of the Declaration of Rights of the Massachusetts Constitution. Estes v. Texas, 381 U.S. 532, 538-45 (1965), Chambers v. Mississippi, 410 U.S. 284, 294-303 (1973).

IV. THE MANDATORY MINIMUM DRUG LAWS UNDER WHICH DENTON WAS SENTENCED VIOLATED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS AS THEY ARE CONTRARY TO THE SEPARATION OF POWERS DOCTRINE, INFLICT CRUEL AND UNUSUAL PUNISHMENT AND VIOLATE EQUAL PROTECTION UNDER THE LAW.

After Denton pled guilty to the subsequent offender portion of the indictment [6/98], Denton was sentenced. The prosecutor indicated that the indictment carried a

minimum mandatory sentence of 3 1/2 years in state prison [6/91,99], and there was a joint recommendation that the mandatory minimum sentence be imposed [6/99-100]. Trial counsel did not make an argument that the judge should impose a lesser sentence. The judge made some statements that indicated that this sentence was the minimum sentence he could impose [6/92,100], and he did impose a sentence of 3 1/2 years in state prison [6/101]. This issue was not preserved for appellate review, so Denton must show that the sentence imposed created a substantial risk of miscarriage of justice. Commonwealth v. Randolph, 438 Mass. 290, 294 (2002).

Denton is aware that as of the date of the filing of this brief there is a case pending in the Supreme Judicial Court (Commonwealth v. Laltaprasad, SJC-11970) which challenges the constitutionality of a mandatory minimum sentence pursuant to the same statute involved here. Denton is raising the issue in the event that the Supreme Judicial Court decides in favor of Laltaprasad, and would request that his case be remanded for re-sentencing should that occur.

First, mandatory minimum drug laws violate separation of powers principles contained in Article Thirty of the Declaration of Rights of the Massachusetts

Constitution. The imposition of an individualized sentence - one which "look[s] closely at all relevant facts and circumstances" and "mak[es] a nuanced decision" - is a "fundamental judicial duty" United States v. Bannister, 786 F. Supp. 2d 617, 689-90 (E.D.N.Y. 2011). Mandatory minimum drug laws foreclose individualized sentencing. The "one size fits all" approach to sentencing for drug offenses creates unfairness in individual cases. A judge's authority to sentence a criminal defendant lies within Article Thirty as a function of the "quintessential judicial power . . . to sentence" in criminal cases. Commonwealth v. Rodriguez, 461 Mass. 256, 264 (2012). See also Commonwealth v. Cole, 468 Mass. 294, 304-05 (2014).

Second, mandatory minimum drug laws force judges to impose sentences that are not consonant with justice, and therefore run contrary to the prohibition against cruel and unusual punishment established by Article Twenty-Six of the Declaration of Rights of the Massachusetts Constitution and the Eighth Amendment to the United States Constitution that punishment be proportionate not only "with respect to the offense itself, but [also] with regard to the particular offender." Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655,

669 (2013). For these constitutional provisions to have any meaning, our understanding of the degree of culpability to be attributed to an individual offender must be responsive to "evolving standards of decency that mark the progress of a maturing society" Commonwealth v. Okoro, 471 Mass. 51, 61 (2015). Consequently, a sentencing regime that mandates a mandatory minimum term of imprisonment for all drug offenders, regardless of the facts of the case or the defendant's background, is not compatible with the constitutional requirement that punishment be proportionate to individual culpability.

Third, the record in this case indicates that Denton is Black [2/39]. Compelling statistical evidence from the Massachusetts Sentencing Commission establishes that individuals like Denton who are members of racial minorities are disproportionately punished for drug offenses carrying mandatory minimum sentences. Notwithstanding the available evidence that the mandatory minimum drug laws are disproportionately applied against people of color, no prosecutor has ever been required to rebut the inference of racial discrimination which this evidence suggests. Under the circumstances, "[j]udicial scrutiny is necessary to protect individuals from prosecution based on arbitrary or otherwise impermissible

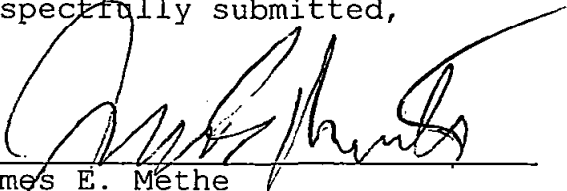
classification" Commonwealth v. Bernardo B., 453 Mass. 158, 168 (2009). The unequal enforcement of an otherwise neutral criminal statute against members of a protected class violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Articles One and Ten of the Declaration of Rights of the Massachusetts Constitution. Id. at 167-169, Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886).

It seems clear from the statements that the judge made before sentencing in this case that he did not have the authority to sentence Denton to a sentence below the mandatory minimum [6/92,100]. Denton would request that his case be remanded for re-sentencing should the Supreme Judicial Court decide in the Laltaprasad case that the judge there did have the authority to impose a sentence below the mandatory minimum. Since the facts of the case indicated that Denton 1)was lured into making a sale of a small bag of heroin; 2)was a runner for a drug dealer, and 3)made \$5.00 for his efforts, this is the type of case that would warrant a sentence below the mandatory minimum.

CONCLUSION

For the foregoing reasons, Denton's conviction should be reversed and his case remanded to the Essex County Superior Court for a new trial or re-sentencing.

Respectfully submitted,

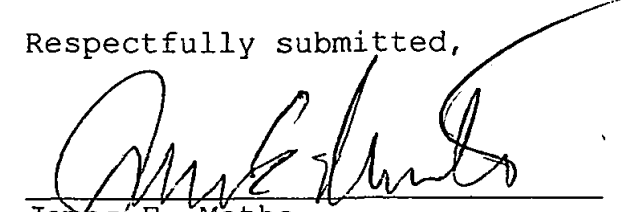


James E. Methe
Attorney for Scypio Denton
21 Stockbridge Street
Springfield, MA 01103
(413) 746-9257
BBO #344100

CERTIFICATE OF COMPLIANCE

Now comes Attorney James E. Methe, counsel for Scypio Denton, and certifies that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs.

Respectfully submitted,



James E. Methe
Attorney for Scypio Denton
21 Stockbridge Street
Springfield, MA 01103
(413) 746-9257
BBO #344100

ADDENDUM

Table of Contents

Cited constitutional provisions.....	34-36
Cited statute	37

The Fifth Amendment to the U.S. Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Eighth Amendment to the U.S. Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the U.S. Constitution provides in part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article One of the Declaration of Rights of the Massachusetts Constitution provides:

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Article Ten of the Declaration of Rights of the Massachusetts Constitution provides in part:

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. .

Article Twelve of the Declaration of Rights of the Massachusetts Constitution provides:

No subject shall be held to answer for any crimes of offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face; and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgement of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Article Twenty-Six of the Declaration of Rights of the Massachusetts Constitution provides:

No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Article Thirty of the Declaration of Rights of the Massachusetts Constitution provides:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

**PART I ADMINISTRATION OF THE GOVERNMENT****TITLE XV REGULATION OF TRADE****CHAPTER 94C CONTROLLED SUBSTANCES ACT****Section 32** Class A controlled substances; unlawful manufacture, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

Section 32. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars, or by both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance as defined by section thirty-one of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum 3 1/2 year term of imprisonment, as established herein.

(c) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

- (i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;
- (ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or
- (iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced

RECORD APPENDIX

Table of Contents

Docket entries.....	1-7
Indictment.....	8
Commonwealth's motion re: predisposition.....	9-10
Defendant's motion re: predisposition.....	11-12
Docket entries - previous conviction.....	13
Docket entries - previous conviction.....	14-15
Docket entries - previous conviction.....	16-18
Notice of appeal.....	19
Stipulation regarding reconstruction.....	20-22

1477CR00156 Commonwealth vs. Denton, Scypio

Case Type	Indictment	Initiating Action:	DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C §32(b)
Case Status	Open	Status Date:	11/25/2014
File Date	02/06/2014	Case Judge:	
DCM Track:	B - Complex	Next Event:	

[All Information](#)
[Party](#)
[Charge](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

Party Information**Commonwealth - Prosecutor**

Alias

Party Attorney

Attorney Dolhun, Esq., Susan C.
Bar Code 665345
Address Eastern District Attorney's Office
 Ten Federal Street
 Salem, MA 01970
Phone Number (978)745-6610

[More Party Information](#)**Denton, Scypio - Defendant**

Alias

Party Attorney

Attorney Jayne, Esq., Alice W.
Bar Code 669536
Address Committee for Public Counsel Services
 One Salem Green
 Suite 408
 Salem, MA 01970
Phone Number (978)825-2020
Attorney Methe, Esq., James E.
Bar Code 344100
Address 21 Stockbridge Street
 Springfield, MA 01103
Phone Number (413)746-9257

[More Party Information](#)**Sprint/Nextel - Keeper of Record**

Alias

Party Attorney[More Party Information](#)**Party Charge Information****Denton, Scypio - Defendant**

Charge # 1: 94C/32/B-0 - Felony DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C §32(b)

Original Charge 94C/32/B-0 DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF.
c94C §32(b) (Felony)

Indicted Charge**Amended Charge****Charge Disposition****Disposition Date** 03/06/2015**Disposition** Guilty Verdict

Events

Date	Session	Location	Type	Event Judge	Result
03/31/2014 09:30 AM	Criminal 1 - K		Arraignment		Held as Scheduled
05/07/2014 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
06/16/2014 09:30 AM	Criminal 1 - K		Hearing RE: Discovery Motion(s)		Rescheduled
07/14/2014 09:30 AM	Criminal 1 - K		Hearing on Compliance		Rescheduled
09/03/2014 09:30 AM	Criminal 1 - K		Hearing on Compliance		Held as Scheduled
10/15/2014 09:30 AM	Criminal 1 - K		Final Pre-Trial Conference		Held as Scheduled
11/17/2014 09:30 AM	Criminal 1 - K		Jury Trial		Not Held
11/25/2014 09:30 AM	Criminal 1 - K		Hearing for Warrant Removal		Held as Scheduled
03/02/2015 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial		Held as Scheduled
03/02/2015 09:30 AM	Criminal 1 - K		Jury Trial		Not Held
03/02/2015 09:30 AM	Criminal 2 - J		Jury Trial		Held as Scheduled
03/03/2015 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Lang, Hon. James F	Held as Scheduled
03/04/2015 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial		Held as Scheduled
03/06/2015 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial		Held as Scheduled
03/11/2015 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Lang, Hon. James F	Held as Scheduled

Ticklers

Tickler	Start Date	Days Due	Due Date	Completed Date
Pre-Trial Hearing	03/31/2014	0	03/31/2014	03/06/2015
Final Pre-Trial Conference	03/31/2014	264	12/20/2014	03/06/2015
Case Disposition	03/31/2014	278	01/03/2015	03/06/2015
Review Appeals Filed	02/26/2016	28	03/25/2016	

Docket Information

Docket Date	Docket Text	File Ref	Image Avail.
02/06/2014	Indictment returned		

03/31/2014	Deft arraigned before Court	
03/31/2014	Appearance of Commonwealth's Atty: Susan Dolhun	2
03/31/2014	Committee for Public Counsel Services appointed, pursuant to Rule 53	3
03/31/2014	Deft waives reading of indictment	
03/31/2014	RE Offense 1: Plea of not guilty	
03/31/2014	Deft released on personal recognizance	
03/31/2014	Bail warning read	
03/31/2014	Assigned to Track "B" see scheduling order	
03/31/2014	Tracking deadlines Active since return date	
03/31/2014	Case Tracking scheduling order (John T Lu, Justice) mailed 3/31/2014	4
03/31/2014	Commonwealth's Notice of Automatic Discovery I Filed	5
05/07/2014	Motion for Discovery Filed	6
09/03/2014	Commonwealth's motion for court order Re: Discovery of government issued cell phone number without objection, allowed (Lu, J)	7
09/03/2014	Deft files motion for court ordered summonses. Without objection, Allowed. (Lu, J.)	8
09/03/2014	Order for Production of Records issued to Sprint/Nextel by 10/3/2014. (Faxed and mailed this date to provider)	9
09/15/2014	Response received from Sprint Re: Order for Records.	10
10/15/2014	Filed: Joint Pre-Trial Memorandum	11
10/17/2014	Deft files amended motion for court-ordered summonses, Allowed. (Feeley, J.)	12
10/17/2014	Order for Production of Records issued to Sprint/Nextel by 11/10/2014	13
10/27/2014	Records from Sprint received.	14
11/17/2014	Defendant defaulted; warrant to issue (John T Lu, Justice)	
11/25/2014	Default removed; warrant recalled Notice of Recall	15
11/25/2014	Warrant Expunged; The Middleton Jail had his name backwards	
11/25/2014	Deft released on personal recognizance	
03/02/2015	Event Result: The following event: Jury Trial scheduled for 03/02/2015 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared:	
03/02/2015	Event Result: The following event: Jury Trial scheduled for 03/02/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Appeared:	
03/02/2015	Defendant's Motion in limine for SEQUESTRATION OF WITNESS	16
	Applies To: Jayne, Esq., Alice W. (Attorney) on behalf of Denton, Scypio (Defendant)	
03/02/2015	Opposition to paper #16.0 OPPOSITION TO DEFENDANT'S REQUEST FOR ENTRAPMENT INSTRUCTION BASED ON TESTIMONY ELICITED IN COMMONWEALTH'S CASE filed by Susan Dolhun, Asst. District atty.	17
03/02/2015	Defendant's Motion in limine to exclude prior convictions from the Commonwealth's case -in-chief.	18
03/02/2015	Endorsement on Motion to , (#18.0): Other action taken	

Issue reserved pending presentation of the evidence on alleged entrapment.

03/02/2015	Defendant's Motion in limine to exclude testimony concerning prior incarceration of the defendant.	19
03/02/2015	Endorsement on Motion in limine to , (#19.0): Other action taken	
	The Commonwealth agree no to present the evidence of familiarity with defendant, if that is relevant, by reference to incarceration. Dated: 3/2/15	
	Applies To: Jayne, Esq., Alice W. (Attorney) on behalf of Denton, Scypio (Defendant)	
03/02/2015	Commonwealth's Motion in limine to admit evidence of defendant's reputation and prior convictions as evidence of defendant's predisposition to commit the crime.	20
03/02/2015	Endorsement on Motion in limine to if an entrapment instruction given, ALLOWED as to specific act of drug dealing. The Court reserves on the admissibility of reputation evidence. DATED: 3/2/15, (#20.0): ALLOWED	
03/02/2015	Witness list	21
	Applies To: Commonwealth (Prosecutor)	
03/02/2015	General correspondence regarding commonwealth's statement of case	22
03/02/2015	Commonwealth's Motion in limine to impeach defendant with prior convictions. filed 3/2/15	23
03/02/2015	Defendant's Motion for individual examination of venire.	24
03/02/2015	Endorsement on Motion for , (#24.0): ALLOWED	
	allowed in part as per rulings on the record. dated: 3/2/15	
03/02/2015	Defendant's Motion for jury instructions. filed 3/3/15	25
03/02/2015	Endorsement on Motion for , (#16.0): ALLOWED	
	Attorney: Jayne, Esq., Alice W.	
03/02/2015	Endorsement on Motion to exclude testimony concerning prior incarceration of the defendant., (#19.0): Other action taken	
	The commonwealth agrees not to present the evidence if familiarity with the defendant, if that is relevant, in reference to his incarceration.	
03/03/2015	Event Result: The following event: Jury Trial scheduled for 03/03/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Appeared:	
03/03/2015	Commonwealth's Motion in limine to elicit in-court identification of defendant by detective ferraro. filed 3/3/15	26
03/03/2015	Defendant's Motion for jury instructions.	26.1
03/04/2015	Event Result: The following event: Jury Trial scheduled for 03/04/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled. Jury trial continues, cont. to 3/6/15 for further Trial. Appeared:	
03/04/2015	Commonwealth's Motion in limine to elicit in-court identification of defendant by eyewitness to defendant's prior bad acts.	27
03/04/2015	Endorsement on Motion in limine to elicit in-court identification of defendant by eyewitness to defendant's prior bad acts., (#27.0): ALLOWED	
	dated: 3/4/15	
03/04/2015	Defendant's Motion to exclude or in the alternative limit, evidence of predisposition. filed 3/4/15	28
03/04/2015	Endorsement on Motion to exclude or in the alternative limit, evidence of predisposition., (#28.0): DENIED	
	after hearing. No evidence of subsequent convictions will be admitted. dated: 3/4/15	

03/06/2015	Event Result: The following event: Jury Trial scheduled for 03/06/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Appeared:	
03/06/2015	Defendant waives rights. Applies To: Jayne, Esq., Alice W. (Attorney) on behalf of Denton, Scypio (Defendant). filed 3/6/15	29
03/06/2015	Defendant's Motion for required finding of not guilty.	30
03/06/2015	Endorsement on Motion for , (#30.0): DENIED dated: 3/6/15	
03/06/2015	Verdict affirmed, verdict slip filed and recorded at 12:45 p.m. Applies To: Dolhun, Esq., Susan C. (Attorney) on behalf of Commonwealth (Prosecutor); Jayne, Esq., Alice W. (Attorney) on behalf of Denton, Scypio (Defendant)	31
03/06/2015	Notice of appeal filed (Copy to DA's Appeal unit) Applies To: Jayne, Esq., Alice W. (Attorney) on behalf of Denton, Scypio (Defendant)	32
03/06/2015	Defendant's Motion for stay of execution of pending appeal. filed 3/6/15	33
03/06/2015	Endorsement on Motion to stay sentence execution, (#33.0): DENIED dated: 3/6/15	
03/06/2015	General correspondence regarding warrant to Massachusetts Correctional Institution CEDAR JUNCTION.	35
03/06/2015	Offense Disposition: Charge #1 DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C §32(b) Date: 03/06/2015 Method: Jury Trial Code: Guilty Verdict Judge: Lang, Hon. James F	
03/06/2015	Defendant sentenced: Sentence Date: 03/6/2015 Judge: Lang, Hon. James F Charge #: 1 DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C §32(b) State Prison Sentence State Prison Sentence-Not Less Than: 3 Years, 6 Months, 0 Days State Prison Sentence-Not More Than: 3 Years, 6 Months, 0 Days Committed to MCI - Cedar Junction (at Walpole) Credits 4 Days	36.1
03/06/2015	Issued on this date: Mitt For Sentence (First 8 charges) Sent On: 03/26/2015 14:32:40	37
03/11/2015	Event Result: The following event: Jury Trial scheduled for 03/11/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Appeared:	

03/18/2015	Defendant's Motion for WAIVER OF VICTIM WITNESS FEE	36
03/20/2015	Endorsement on Motion in limine to elicit in-court identification of defendant by detective ferraro., (#26.0): ALLOWED after hearing for the reasons stated on the record. dated: 3/3/15	
03/23/2015	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	
03/23/2015	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	
03/23/2015	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	
04/01/2015	Court Reporter Javs J. is hereby notified to prepare one copy of the transcript of the evidence of 03/02/2015 09:30 AM Jury Trial, 03/03/2015 09:00 AM Jury Trial, 03/04/2015 09:00 AM Jury Trial, 03/06/2015 09:00 AM Jury Trial, 03/11/2015 09:00 AM Jury Trial.	38
04/10/2015	Endorsement on Motion for waiver of victim witness fee., (#36.0): DENIED	
04/10/2015	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	
04/27/2015	Appearance entered On this date James E Methe, Esq. added as Appointed - Indigent Defendant for Defendant Scypio Denton	39
10/06/2015	OTS is hereby notified to provide the JAVS transcript of the proceedings of 03/02/2015 09:30 AM Jury Trial, 03/03/2015 09:00 AM Jury Trial, 03/04/2015 09:00 AM Jury Trial, 03/06/2015 09:00 AM Jury Trial.	
10/21/2015	General correspondence regarding DVD/CD for 3-2, 3-3, 3-4 and 3-6 sent to OTS on this date	40
11/17/2015	General correspondence regarding CD for 3-6-15 sent to OTS on this date	
12/17/2015	Appeal: Transcript received from Court Reporter in Digital Format	
05/06/2016	Defendant's Stipulation regarding reconstruction of the evidence or proceedings pursuant to Mass. R.A.P. 8(e)	41
06/06/2016	Defendant's Motion to compel assembly of records. (Copy to Lang, J.)	42
06/08/2016	Endorsement on Stipulation regarding Reconstruction of the Evidence or Proceedings Pursuant to mass. R. A. P. 8 (e), (#41.0): ALLOWED Allowed, in accordance with Mass. R. App. P. 8(c). The stipulation having so entered, the record may be assembled for appellate review. Dated 6/8/16	
06/08/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: James E Methe, Esq. Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	
06/08/2016	Endorsement on Motion to Compel Assembly of Record, (#42.0): ALLOWED Allowed, the court having this date approved the parties' stipulation regarding the inaudible portions of the trial transcript. Dated 6/8/16	
06/08/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: James E Methe, Esq. Attorney: Alice W. Jayne, Esq. Attorney: Susan C. Dolhun, Esq.	

Attorney: Susan C. Dunham, Esq.

07/18/2016	Appeal: notice of assembly of record	43
07/19/2016	Statement of Case Appeal filed:	44
07/19/2016	Record sent to counsel	
07/28/2016	Notice of Entry of appeal received from the Appeals Court	45

Case Disposition

Disposition	Date	Case Judge
Disposed by Jury Verdict	03/06/2015	

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for said County of Essex, on the first Monday of **January** in the year of our Lord two thousand fourteen.

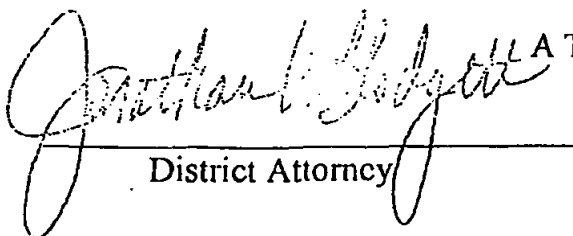
THE JURORS for the Commonwealth of Massachusetts upon their oath present, that

SCYPIO DENTON

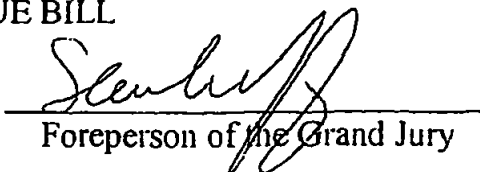
of **Lynn**, in said County of Essex, on the **seventeenth** day of **December**, in the year of our Lord **two thousand thirteen**, at **Lynn** in the County of Essex aforesaid

did unlawfully distribute a controlled substance in Class A of G.L. chapter 94C, section 31, to wit: heroin; said defendant having been previously convicted of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of G.L. chapter 94C, under this or any prior law of the Commonwealth or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.


District Attorney

A TRUE BILL


Foreperson of the Grand Jury

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

ESSEX SUPERIOR COURT
INDICTMENT NO. ESCR2014-0156

COMMONWEALTH

v.

SCYPIO DENTON

**COMMONWEALTH'S MOTION IN LIMINE TO ADMIT EVIDENCE OF
DEFENDANT'S REPUTATION AND PRIOR CONVICTIONS AS EVIDENCE OF
DEFENDANT'S PREDISPOSITION TO COMMIT THE CRIME**

Now comes the Commonwealth and moves in limine to admit evidence of the Defendant's reputation as a drug dealer and drug runner and evidence of his prior convictions for drug distribution offenses. The Commonwealth anticipates introducing this testimony through police officer witnesses.

As reasons therefore, the defense has notified the Commonwealth of its intent to raise an entrapment defense. It remains unclear what evidence the defendant relies upon to show the requisite government inducement. However, assuming the defendant is able to make the initial showing, when a defendant produces "some evidence" of government inducement, "the burden [then]...shifts to the Commonwealth 'to provide beyond a reasonable doubt that (1) there was no government inducement or (2) the defendant was predisposed to commit the crime.'" Commonwealth v. Madigan, 449 Mass. 702. While the Commonwealth disputes there was evidence beyond mere solicitation in this case, the Commonwealth seeks to introduce evidence of the defendant's predisposition by way of prior bad acts for drug distribution offenses, "provided that those acts are sufficiently similar to the crime charged to ensure that their probative value outweighs the strong likelihood of prejudice." See Commonwealth v. Buswell, 468 Mass. 92 (2014).

The Commonwealth has attached the police reports containing the substance of the anticipated testimony, in addition to the prior convictions sought to be introduced as rebuttal evidence.

RESPECTFULLY SUBMITTED
FOR THE COMMONWEALTH,
BY DISTRICT ATTORNEY
JONATHAN W. BLODGETT
THIS 2ND DAY OF MARCH 2015



Susan Dolhun BBO #665345
Assistant District Attorney
Eastern District Attorney's Office
10 Federal Street
Salem, Massachusetts 01970
(978) 745-6610

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
ESCR 2014-156

COMMONWEALTH

v.

SCYPIO DENTON

DEFENDANT'S MOTION TO EXCLUDE, OR IN THE ALTERNATIVE LIMIT,
EVIDENCE OF PREDISPOSITION

Now comes the Defendant and hereby moves this Honorable Court to exclude, or in the alternative, limit evidence the Commonwealth is permitted to introduce in order to demonstrate that the Defendant was predisposed to commit the alleged crime in the instant case. "To show [] predisposition, the Commonwealth may introduce evidence of a defendant's prior bad acts, provided that those acts are sufficiently similar to the crime charged to ensure that their probative value outweighs the strong likelihood of prejudice." Commonwealth v. Buswell, 468 Mass. 92, 106 (2014). Here, the Commonwealth has provided him with notice of two such prior bad acts, occurring in 1993 and 1994, and their related convictions. While the acts described are similar as to the nature of the charge, the Defendant states that they are too remote in time to be properly considered by the finder of fact as evidence of predisposition, and therefore their probative value is outweighed by their prejudice to the Defendant. See, Commonwealth v. Dingle, 73 Mass. App. Ct. 274, 284 (2008).


Alternatively, the Defendant contends that, even if the Commonwealth is permitted to introduce such prior bad acts evidence through a witness with personal knowledge of such, the Commonwealth should not be permitted to also introduce the convictions themselves related to such acts. Those convictions are themselves subsequent offenses and would be an indirect

means to introduce additional convictions. Nor should any witness be permitted to testify as to issues, statements, or subject matter to which he was not a percipient witness as such would constitute inadmissible hearsay.

The Defendant moves for a *voir dire* to determine the admissibility of any evidence the Commonwealth offers to demonstrate predisposition.

Respectfully Submitted,
SCYPIO DENTON

By His Attorney,



Alice W. Jayne
BBO #669536
Committee for Public Counsel Services
One Salem Green, Suite 408
Salem, MA 01970
(978) 825-2020



9577CR 461

COMMONWEALTH VS. SCYPIO DENTON

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

OFFENSE: violation of controlled substance Laws, (Possession with intent to distribute).
PLACE: Lynn

SURETY AND AMOUNT:

PROSECUTOR: Dunbar Livingston, A.D.A., Museum Place, 1 East India Square, Salem, MA. 01970COUNSEL: F. Robert Allison, Esq. 6 Lynde St., Salem, MA. 01970 (APPOINTED)JUSTICE DISPOSING OF CASE: Botsford, J.

1995 Feb 22	1-2	INDICTMENT FILED:
Feb 28	3	Notice of Assignment of Counsel C-1231659-2 F. Robert Allison for the Defendant.
	4	F. Robert Allison, Esq. appointed and appears for the Defendant.
	5	Dunbar Livingston, Assistant District Attorney, appears for the Commonwealth.
		Defendant waives reading of Indictment and Pleads Not Guilty.
	6	Defendant ordered to Recognize Fifty thousand dollars Surety or Five thousand dollars Cash.
		Continued to March 28, 1995 for Conference.
		Graham, J., presiding; A. Green, stenographer
March 16	7	Defendant's Motion for oral and Written Statements of Defendant. Filed
	8	Defendant's Motion for Oral and Written Statements of Witnesses. Filed
	9	Defendant's Motion to Inspect Physical Evidence. Filed
	10	Defendant's Motion for Exculpatory Evidence - Criminal Records of Commonwealth's Witness(es). Filed
	11	Defendant's Motion for disclosure of Exculpatory Evidence. Filed
	12	Defendant's Motion for Production of Police Records/Certificate of Service Filed.
Mar 28	13	Pretrial Conference Report Pursuant to Rule 22, Mass. R. Crim. Pro. Filed in Court.
		Motion #10 Allowed As Amended (Cratsley, J.)
		Motion #'s 7, 8, 9 and 11 AGREED.

A TRUE COPY
 [Signature]
 CLERK

19 95

Mar 28		Continued to April 24, 1995
		Cratsley, J., presiding; A. Green, stenographer
April 25		Continued to May 12, 1995
		Cratsley, J., presiding; Vega, stenographer
May 22		Now comes the Commonwealth and hereby enters a NOLE PROSECUT in so much of the Indictment alleged a 2nd Offense. (D. David Livingston, Assistant District Attorney)
		Guilty "to Possession of Class B With intent to Distribute"
	14	SENTENCE: Two and Half (2 1/2) years MCI Cedar Junction, Committed
		153 days Credit
	15	Victim/Witness Assessment \$50.00
		Botsford, J., presiding; Parziale, stenographer
May 25	16	Motion to Revise and Revoke/Certificate of Service
July 28	17	Motion to waive Payment of fine and substitute additional time served. Filed
	18	Affidavit of Indigency and request for waiver, substitution or State payment
Aug. 21	19	of Fees and Costs Paid Received! (\$50.00)
		Victim/Witness Assessment Received, (\$50.00)

COMMONWEALTH VS.

SCYPIO DENTON

9477CR 506

OFFENSE: Violation of the controlled substance laws. (Possession with intent to distribute)
PLACE: Lynn.

SURETY AND AMOUNT:

PROSECUTOR: Dunbar Livingston Assistant District Attorney Museum Place Salem Ma

COUNSEL: Robert Allison, Esquire 6 Lynde Street Salem, MA

JUSTICE DISPOSING OF CASE: Botsford, J.

INDICTMENT FILED:

1994 Mar. 9 1
April 6

Dunbar Livingston, appears for the Commonwealth

2 Robert Allison, esquire appears for the Defendant

Defendant waives reading pleads not guilty

Defendant ordered to recognize personal recognizance

3 Order of Discovery filed.

Continued to April 27, 1994 for Pretrial

Discovery Conference continued to May 10, 1994

Cratsley, J. Presiding: Pratt Stenographer

May 4 4 Defendant's Motion for Oral and Written Statements of Defendant
filed

5 Defendant's Motion for Oral and Written Statements of Co Defendant filed

6 Defendant's motion for oral and written statement's of witnesses filed

7 Defendant's motion to inspect physical evidence filed

8 Defendant's motion for production of photographs filed

9 Defendant's motion for exculpatory evidence criminal records of commonwealth
witnesses filed

10 Defendant's Motion for Disclosure of Exculpatory evidence filed

11 Defendant's Motion for Production of Police records filed

12 Certificate of Service filed

May 19 Continued to May 26, 1994

Donovan, J., presiding; K. Gordon, stenographer.

94		
May 19		Continued to May 26, 1994
		Donovan, J. Presiding: Gordon Stenographer
May 26		Continued to June 10, 1994
June 10		Connolly, J. Presiding: Hezekiah
		Continued to June 23, 1994
June 23		Connolly, J. Presiding: Vega Stenographer
		Continued to July 20, 1994
July 20		Connolly, J. Presiding: Hezekiah Stenographer
		Continued to August 25, 1994
August 25		Connolly, J. Presiding: Cullinan stenographer
		Continued to October 26, 1994
		Connolly, J. presiding: Cormier Stenographer
	13	Pretrial conference report filed.
Sept 12	14	Motion for Funds for investigator filed and after hearing allowed. McHugh, J.
Oct 21	15	Motion to suppress Memorandum in support of motion to suppress defendant's
		statements. Affidavit of F. Robert Allison, Esquire, Certificate of
		Service filed.
Oct 26		Held for Trial
Oct 31		McHugh, J. Presiding: Hezekiah Stenographer
		Defendant Defaulted
		Capias Issued
		McHugh, J. Presiding: E. Taper Stenographer
		Default removed
		Capias Recalled
		Continued to November 3, 1994 for Change of Plea
		McHugh, J. Presiding: E. Taper Stenographer
Nov 3		Defendant Defaulted
		Capias Issued
		McHugh, J. Presiding: M. Hezekiah Stenographer
Oct 24 1995	16	Commonwealth's Answers to Defendant's Discovery Motions filed.
Jan 10		Default Removed/Capias Recalled
	17	Bail set at One hundred thousand dollars surety or Ten thousand dollars CASH
		Set Without Prejudice
		Continued to January 31, 1995
		Grabau, J., presiding: A. Green, stenographer
Jan 31	18	Capias Returned Dated November 3, 1994
		Continued to February 16, 1995
		Grabau, J., presiding: A. Green, stenographer

COMMONWEALTH
OF
MASSACHUSETTS
ESSEX, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

COMMONWEALTH VS. Scypio Denton		No. CR- 506
		PAGE 2
1995		
Feb 28		Continued to March 28, 1995
		Grabau, J., presiding; A. Green, stenographer
Mar 28		Continued to April 25, 1995
		Grabau, J., presiding; A. Green, stenographer
April 25		Continued to May 12, 1995
		Cratsley, J., presiding; Vega, stenographer
May 22		Now comes the Commonwealth and hereby enter a NOLLE PROSTIQUE on so much of the indictment Distribution alleged 2nd Offense.
		D. David Livingston, Assistant District Attorney
		Plea of Guilty to 1st Offense "Possession Class B With intent to distribute."
		SENTENCE: Five (5) to Seven (7) years Cedar Junction. Suspended
		Two (2) years Probation From and After #95-461: Condition of Probation
		Drug Programs. \$30.00 Probation Fee
		Borsford, J., presiding; Parziale, stenographer
May 25	19	Motion to Revise and Revoke/Certificate of Service. Filed

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
ESCR 2014-156

COMMONWEALTH

v.

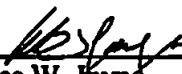
SCYPIO DENTON

NOTICE OF APPEAL

Notice is hereby given that the defendant in the above case, being aggrieved by certain opinions, rulings, directions, and judgments of the Court, hereby appeals pursuant to Massachusetts Rules of Appellate Procedure, Rule 3.

Respectfully Submitted,
SCYPIO DENTON

By his attorney,



Alice W. Jayne
BBO No. 669536
Committee for Public Counsel Services
One Salem Green, Suite 408
Salem, MA 01970
(978) 825-2020

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SALEM SUPERIOR COURT
DOCKET No. ESCR2014-156

COMMONWEALTH

v.

SCYPIO DENTON,

Defendant.

PARTIES' STIPULATION REGARDING RECONSTRUCTION
OF THE EVIDENCE OR PROCEEDINGS
PURSUANT TO MASS.R.A.P.8(e)

Background

On March 6, 2015, on the last day of a four-day trial (Lang, J., presiding), a jury convicted the defendant of distributing a Class A drug, subsequent offense, in violation of G.L. c. 94C, § 32(b) (Docket No. 1477CR00156). The judge sentenced him to a term of not less than three and one-half years and not more than three and one-half years and one day in state prison. The defendant filed a Notice of Appeal on March 6, 2015.

Certain portions of the transcript of the trial were "inaudible."

Along with the materials contained in the Clerk's files, the following constitutes the available record for these days:

Reconstructed RecordMarch 4, 2015

FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX

MAY 06 2016

Thomas H. Russell Jr.
CLERK

1. With regard to page 43, lines 18-25; and page 44,
line 1:

After the judge gave a limiting instruction on entrapment, the defendant's trial counsel reiterated her objection "for the record" to the testimony regarding the defendant's conviction dating back to 1993 being used for predisposition purposes related to the entrapment defense.

March 6, 2015

2. With regard to page 13, line 10:

During the sidebar, trial counsel objected, stating, she did "not know where this was going." Judge Lang asked the prosecutor what the relevancy of her question was and she told him that because the credibility of the police witnesses was under attack throughout the trial, that she was entitled to explain to the jury why Capt. Hughes had a specific memory of this particular hand-to-hand transaction after having been assigned to countless units and doing numerous hand-to-hand buys. Judge Lang asked the prosecutor if she knew what the witness was going to say, and the prosecutor said "Yes," and explained at sidebar that the officer was about to say that he remembered this particular transaction because he breached protocol and left his surveillance team by going inside the apartment complex without any backup, which was foolish and extremely

dangerous. He remembered it specifically because he did what he was not supposed to do. Judge Lang overruled the defendant's objection.

3. With regard to page 48, line 13:

The defendant's trial counsel objected to the prosecutor's closing argument in two respects: first, to a portion of her argument on page 38, that "The majority of normal people, like all of you, the 70 to 80 percent just walk away;" and second, to her argument on page 39 that, "And the words that Trooper DesFosses used, those words, were probably not familiar to you before you came into this courtroom. And in fact, if someone came up to you on the streets before you heard all of this at trial and asked for some brown, you probably would have run away thinking that they were crazy."


The judge responded that he heard the references objected-to by the trial counsel, and that he did not believe they rose to the level of "requir[ing] a corrective instruction" (page 49, line 9-10).

Respectfully submitted and
Agreed Upon this 5th day of
April, 2016.

May



Susan Dolhun, ADA
10 Federal Street
Salem, MA 01970



Attorney Alice W. Jayne
CPCS
One Salem Gr., Suite 408
Salem, MA 01970